

# Memorandum

**To:** Members of:  
Texas House Insurance Committee  
Senate Business & Commerce Committee

**From:** Albert Betts and Jay Thompson (ICT & AFACT); Joe Woods and Fred Bosse (APCIA); Jon Schnautz (NAMIC); and Beaman Floyd (TCAIS).

**Date:** March 27, 2020

**Re:** Business Interruption or Business Income Insurance & COVID-19

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There have been a lot of questions relating to business interruption insurance and whether it provides coverage for closures mandated by the current COVID-19 emergency declarations. This memo is intended to provide your office with a summary of current developments and some of the important business interruption coverage provisions in the standard commercial business property forms used in Texas.

Most of the standard commercial policies were not designed to provide coverage against communicable diseases, such as COVID-19, and many contain endorsements created in 2006 to exclude coverages for virus and bacteria. However, not all policies are the same. The initial step in assessing coverage on any particular policy is communication between the policyholder, company, and agent, as appropriate. Business interruption coverage is provided only in certain forms, most commonly commercial property insurance forms. Coverage is only triggered when property is damaged by a covered cause of loss such as a fire, windstorm, and hail.

The reasons this coverage is typically not available for pandemics and other similar large-scale risks has both a historical basis and is consistent with basic principles that insurance cannot cover all risks. Large scale risks such as war, pandemics and terrorists' acts are a few of common risks too large to cover. After 9/11, property damaged by terrorists' acts is covered only because the federal government backstops insurers offering this coverage. After 9/11, concerns over large scale pandemics such as SARS and other viruses led to inclusion of virus and bacterial exclusions in most policies. This may give some perspective in the current situation.

Even though most standard commercial property forms that contain a business interruption coverage have been vetted and approved by state regulators, not all forms are regulated, and some policies may have been issued by surplus lines insurers, which are unregulated. If there is business interruption coverage in a particular policy, insurers are committed to making prompt payment where coverage exists.

## **Recent Developments.**

On March 25, 2020, the NAIC released a statement to Congress and specifically discussed business interruption insurance when it stated:

“Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19 and therefore include exclusions for that risk. Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.”<sup>1</sup>

The leaders<sup>2</sup> of the national property insurance trade associations and associations for independent agents recently wrote a joint letter to Members of Congress that stated:

“Standard commercial insurance policies offer coverage and protection against a wide range of risks and threats and are vetted and approved by state regulators. Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19,”

“The U.S. insurance industry remains committed to our consumers and will ensure that prompt payments are made in instances where coverage exists,” they added.

Many of the individual insurance groups that are members of ICT, AFACT, APCIA, NAMIC and TCIAS have been active in charitable efforts in their communities and have begun working with agents and customers to be flexible on premium payments.

Shelter in place orders have been issued in a number of Texas cities and counties. A statewide order has not been issued.

The members of our associations have received the recent TDI bulletins encouraging them to consider using grace periods for payments, temporary suspension of premium payments, payment plans, and other actions to allow continuing insurance coverage as appropriate for all lines of business, and we believe our member companies will work with their policyholders accordingly.

On February 7, 2020, ISO released two optional endorsements for use with the Commercial Property forms to provide specific limited Business Interruption coverage for business interruption loss due to actions by civil authorities in order avoid or prevent infection or spread by or from the

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<sup>1</sup> The full NAIC statement can be viewed at [https://content.naic.org/article/statement\\_naic\\_statement\\_congressional\\_action\\_relating\\_covid\\_19.htm](https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm).

<sup>2</sup> David Sampson, president and chief executive officer of the APCIA; Charles Chamness, president and CEO of NAMIC, Bob Rusbuldt, president and CEO of IIABA and Ken Crerar, president and CEO of CIAB, sent a joint letter to Rep. Velazquez, D-NY

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Coronavirus. This is only a recent development. It will be up to individual companies that use ISO forms to determine whether to file or use those forms on their own.

Before a form can be used, each individual company must follow all filing regulations in Texas for form approval and rate filing associated with the form itself.

Businesses are urged to review their policy forms with their agent. The national Independent Agents have conducted webinars on business interruption coverage and made this available for free to agents and others. Insurers who are members of trade associations listed above are being encouraged to reach out to agents and customers who have purchased business interruption coverage to review their options.

**Summary of Basic Coverages and Exclusions for Business Interruption Insurance.** The attached document provides a summary of basic coverage under most forms. As shown in this document, there are a number of optional coverages that may be available, and some businesses may have negotiated special terms and provisions.

In summary, business interruption insurance provides protection only when there is a direct physical loss to property, the damage or loss is caused by a covered cause of loss, and such damage forces a business to close temporarily. Thus, the standard business interruption endorsement does not cover claims related to other incidents, including [COVID-19](#). Additional coverages, such as the civil authority clause, only covers closures based on damage from a covered cause or loss to the insured property or adjacent property damaged by a covered cause of loss. Because most closures now being imposed are not the result of damage to property and most policies have a virus or bacteria exclusion, the standard civil authority provision does not provide coverage for COVID-19 claims.

It is also important to recognize that small business may be able to apply for loans or grants to the Small Business Administration for loans for economic losses.<sup>3</sup> Small Business Loan Applications for Disaster Relief typically contain information about insurance. If a small business is covered for business interruption, the SBA may or may not grant loans until insurance proceeds have been exhausted.

Congress is considering legislation where small businesses may be able to turn to federal relief programs to help recoup economic losses related to the virus and actions by local, state, and federal authorities.

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<sup>3</sup> <https://www.sba.gov/funding-programs/disaster-assistance>

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**If you have questions or need additional information, please feel free to contact:**

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Cc: Lee Loftis, IIAT

## SUMMARY OF STANDARD COVERAGES AND EXCLUSIONS FOR BUSINESS INTERRUPTION INSURANCE

**The Standard Coverage Form.** The standard form is often referred to as the ISO policy language approved in most states and used by a large number of insurers. This form is attached. Part of the key language reads as follows:

“We will pay for the actual **loss of Business Income** you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be **caused by direct physical loss of or damage to property** at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be **caused by or result from a Covered Cause of Loss.**”

### Definitions and Comments on Key Terms:

- **Business income**-is typically defined to mean the loss of Net Profit or loss before taxes and normal operating expenses including payroll. There may be variation for manufacturing risks and rental values.
- **Physical loss or damage to Property**-most, if not all, property policies require damage to property **caused by a covered cause of loss**. The presence of a virus is typically not damage to property and can be remediated in 1-3 days.
- **Covered Cause of Loss**-policies identified covered perils such as fire, windstorm, hail, and other perils listed in the policy. Additional perils may be added as needed such as earthquake, or other specific perils listed in the policy. Pandemic or virus are typically not a covered peril for cause of loss and most policies issued since 2006 have a **virus or bacteria exclusion**.

### Optional Additional Coverages:

- **Extra Expense**- is often defined as the necessary expense incurred by the insured during the period of restoration that it would not have been subjected to if there had been no physical loss to real or personal property caused by a covered peril
- **Civil Authorities** --is coverage designed for the *actual loss* sustained by the insured during the length of time when access to such described premises is specifically prohibited by *order of civil authority* as a *direct result of damage* to covered property on the described premises or property adjacent to the premises described in the insured's policy.

There is usually a time period for coverage, which is either 14 or 30

consecutive days. Waiting periods are also common: Common waiting periods are 24 hours, 48 hours, or 72 hours.

- **Dependent or Contingent Interruption**-is designed to cover an insured's business income loss resulting from loss, damage, or destruction of property owned by others, including: direct "suppliers" of goods or services to the insured and/or direct "receivers" of goods or services manufactured or provided by the insured. The property damage to these suppliers or receivers must be of a type that would be covered by the insured's policy had the damage happened to the insured's property.

**Common Exclusions:** Exclusions in a policy typically exclude from coverage both standard and optional additional coverages. The following key exclusions are in most policies and may be important in determining coverage for a particular claim:

- **Virus or Bacteria Exclusion**-- This is a common exclusion on most policies. First implemented in 2006, it excludes virus or bacteria as a covered cause of loss. If this exclusion is in a policy, it is unlikely there will be coverage under any of the standard or optional coverages.
- **Pollution Exclusion**-most policies contain a pollution exclusion that is broadly defined to exclude contaminants, pollutants and may include virus or bacteria.